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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,390	03/26/2004	John Gross	DFMD-P-040301	3241

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CANADA

EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,390

Applicant(s)

GROSS, JOHN

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/26/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on March 28, 2003. It is noted, however, that applicant has not filed a certified copy of the Canadian application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

2. The information referred to in the information disclosure statements filed on March 26, 2004 has been considered as to the merits.

Claim Objections

3. Claim 1 is objected to because of the following informalities: the claim does not terminate with a period. Claim 2 is objected to as being dependent upon a rejected base claim. Appropriate correction is requested.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

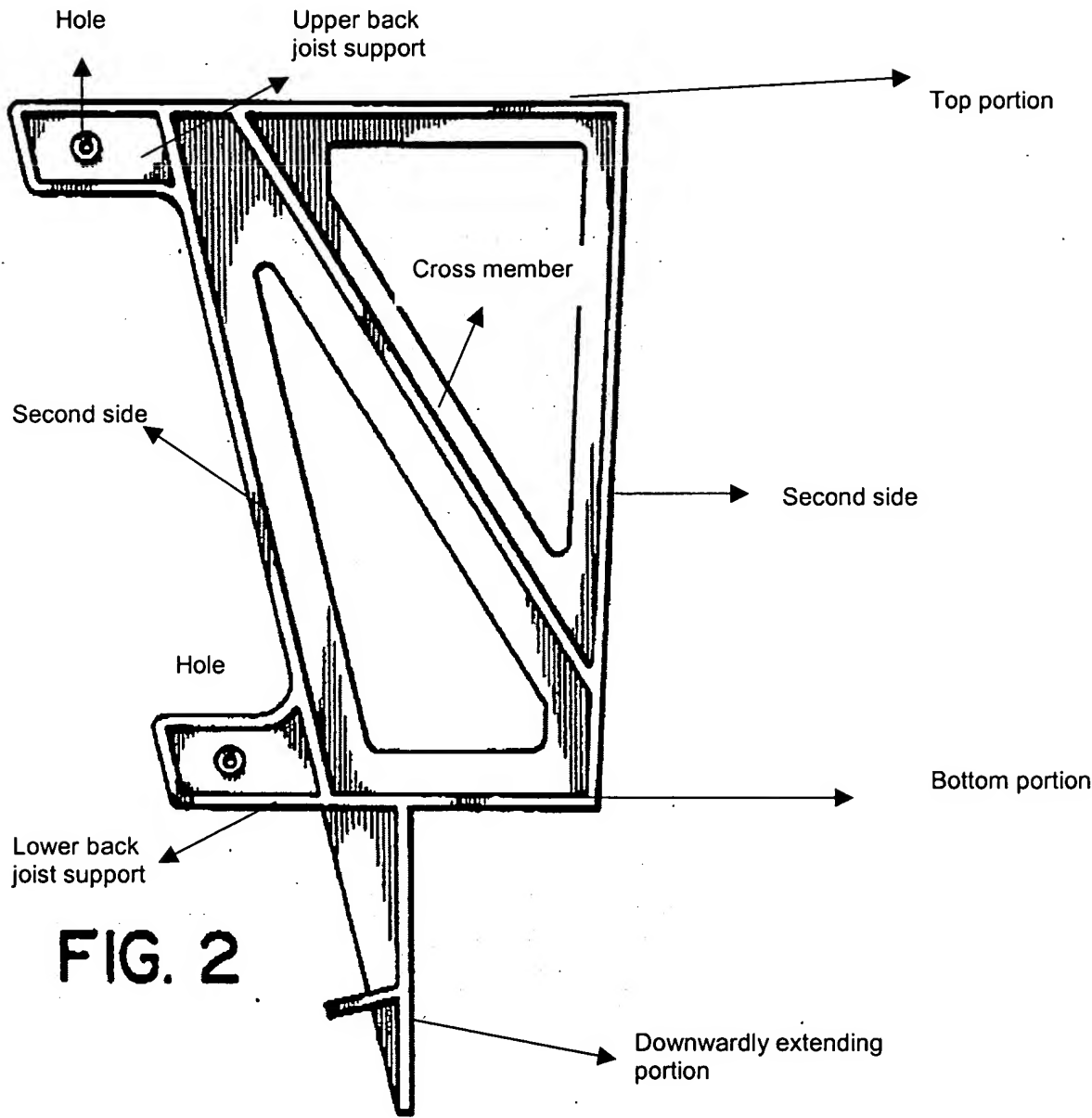
In lines 1-3 of claim 1 and claim 5, only a seating bracket is positively claimed. The back joist is not positively claimed, but merely presented as being in the environment of the claimed element. In line 3 of claim 4, the phrase "the upper and lower back joist support portions hold the generally upstanding back joist substantially parallel" shows a combination of unclaimed elements (the back joist) and claimed elements (the back joist support portions). This combination creates confusion with regards to what elements applicant wishes to positively claim and therefore renders claim 4 indefinite. Furthermore, in lines 1-2 of claim 7, the phrase "said upper and lower back joist support portion should the back joist substantially parallel to said first side portion" shows a combination of unclaimed and positively claimed elements. Again, this combination creates confusions with regards to what elements application wished to positively claim and therefore renders claim 7 indefinite.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (D 348,216) in view of Schoenecke (855,817), as best understood with the above cited indefiniteness. The following labeled Figures disclose the claimed elements.



With respect to claims 1 and 5, Smith discloses a seating bracket for connection to a base having a top surface and a vertical side surface to support a seat and a back joist adjacent to the seat, the bracket comprising: a generally horizontal top portion for supporting the seat; a generally horizontal bottom portion for connection to the top surface of the base; first and second generally vertical side portions connected to said top and above said bottom portion; extending between and bottom portions and supporting said top portion; a first intersecting cross member extending between and connected to said top portion and to said second generally vertical side portion; an upper back joist support portion connected to said first generally vertical side portion adjacent to said top portion for receiving the back joist and holding the back joist in a generally upstanding position, and a lower back joist support portion connected to said first generally vertical side portion adjacent to said bottom portion for receiving the back joist and holding the back joist in a generally upstanding position.

With respect to claims 2 and 6, said lower back joist support portion has a downwardly extending portion below said bottom portion for connection with said vertical side surface of the base.

With respect to claim 3, Figures 3 and 4 disclose holes in the top portion and the bottom portion respectively to facilitate attachment of a seat member and attachment to the support surface. Furthermore, the above labeled Figures disclose the holes formed in the upper and lower back joist support portions.

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With respect to claims 4 and 7, the first generally vertical side portion is inclined with respect to vertical and the upper and lower back joist support portions hold the back joist substantially parallel to said first side portion.

With respect to claim 8, said quadrangular portion consisting of the two side portions, top portion and bottom portion in combination with the cores member and upper and lower back joist support portions and the downwardly extending portion are unitary.

Smith reveals all claimed elements with the exception of a second cross member.

Schoenecke teaches the use of 2 cross members for supporting a seat (16).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add an additional cross member to the structure disclosed by Smith as taught by Schoenecke, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (D 348,216) in view of Schoenecke (855,817) and in further view of Boisvert (4,285,542). As disclosed above, Smith, as modified, reveals all claimed elements with the exception of seat plank means, a plurality of back joists and a back support means.

Boisvert discloses a seat bracket that supports a seat plank means (20), a plurality of back joists (22) proximate said seat plank means (20) extending through a

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back joist support member (44). Figure 2 best discloses the back joist (22) having a downwardly extending portion below a bottom portion (30b) and a back support means (24) extending between said joists (22).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to include the seat plank means, back joists and back support means with the bracket disclosed by Smith, as modified. Such a modification creates an environment in which the bracket can be put to use as intended.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Graney (5,337,471) and Fecteau et al. (5,382,083).


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315 (number will be changed to (571) 272-6854 in April). The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB
January 11, 2005


Peter M. Cuomo
Supervisory Patent Examiner
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